



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Abner Lerner
Serial No.: 09/822,979
Title: COMMUNICATION PROTOCOL FOR THE BROADCAST OF
FIRST/LAST EVENT DETECTION OVER A SINGLE
COMMUNICATION CHANNEL
Filed: March 30, 2001
Attorney Docket No.: 0325.00363
Examiner: Ly, A.
Art Unit: 2667

CERTIFICATE OF MAILING

I hereby certify that this letter, the response or amendment attached hereto are being deposited with the United States Postal Service as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 16, 2005.

By: Jan M. Dunbar
Jan M. Dunbar

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection of August 16, 2005 in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal by an attorney either of record or acting under 37 CFR 1.34. Even though changes in the dependent claims submitted in the Amendment After Final on October 6, 2005 were not entered by the Examiner (no reason was provided), the independent claims were not amended. Therefore, review of the claims in their current form is requested.

REMARKS

Review is requested for the following reasons:

1. The Examiner has clearly made the following errors in the rejection(s).

The Examiner incorrectly combines the background section with Stirling. The background section does not teach or suggest a communication protocol device configured to broadcast the first and last event over a shared communications channel, as presently claimed. Stirling does not cure the deficiencies of the background section. See the arguments presented on pages 8-9 of the Amendment After Final.

2. The Examiner incorrectly states the standard for motivation.

Stirling makes no mention of a first local event and a last local event, as presently claimed. If Stirling makes no mention of such local events, what motivation is there in Stirling to make the proposed combination? Clearly, no motivation is present. The Examiner improperly frames the issue in the advisory action by stating that Stirling does not need to be concerned with a first local event and a last local event, but only a shared communications channel. The background section was presented to aid in the understanding of the claimed invention, not as an art

reference. The background section is part of applicant's disclosure and should not be used as a blueprint for a 103 rejection. However, the Examiner has used applicant's disclosure as the exclusive motivation for the (improper) combination. See the arguments presented on pages 8-9 of the Amendment After Final.

3. The Examiner fails to show proper motivation for making the asserted obviousness rejections (35 U.S.C. §103) of claim 6.

Claim 6 comprises of a receive module that is used to receive the event detection information from the station, and a transmit module that is used to transmit the event detection information from the station through the communication channel. Despite the broad conclusion presented in the Office Action, the background section does not disclose such transmit or receive modules. The citation provided (i.e., page 1, lines 16-18) does not mention such modules. Claim 6 is independently patentable. See the arguments presented on page 9 of the Amendment After Final.

4. The Amendment After Final should be entered.

Since the Amendment After Final only addressed claim objection issues, it should be entered for purposes of appeal. No explanation has been provided why the amendments have not been entered. Clarification regarding claims 18 and 19 is also

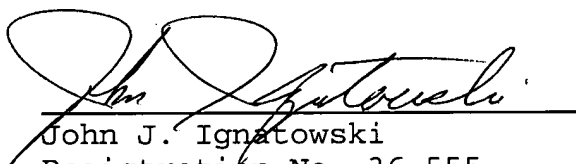
requested. Applicant's representative pointed out the antecedent basis that previously escaped the examiner. However, no mention of these claims was made in the advisory action. See the attachment to the advisory action.

The Examiner is respectfully invited to call the Applicant's representative should it be deemed beneficial to further advance prosecution of the application.

If any additional fees are due, please charge our office Account No. 50-0541.

Respectfully submitted,

CHRISTOPHER P. MAIORANA, P.C.

A handwritten signature in cursive script, appearing to read "John J. Ignatowski", is written over a horizontal line.

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Dated: November 16, 2005

Docket No.: 0325.00363